



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.555 of 2017

and

C.M.P.(MD)No.11920 of 2017

1.Raman

2.Ramiah : Appellants / Respondents 1 & 3
/ Defendants 1 & 3

-Vs-

1.Koothayee

2.Muniasamy : Respondents /Appellants / Plaintiffs

Respondents 1 and 2 are represented by Power Agent
Bharathi

3.Mohamed Jan :3rd Respondent / 2nd Respondent
/ 2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure against the judgment and decree dated 03.08.2017 made in A.S.No.20 of 2016, on the file of the learned Additional District Judge (Fast Track Court), Paramakudi, reversing the judgment and decree dated 24.02.2016 made in O.S.No.63 of 2013 on the file of the Sub Court, Paramakudi.

For Appellants :Mr.S.Srinivasa Raghavan

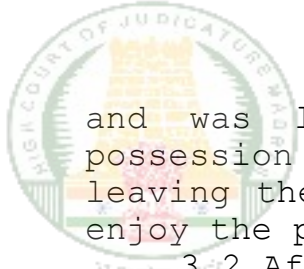
JUDGMENT

The second appeal is filed against the judgment and decree dated 03.08.2017 made in A.S.No.20 of 2016, on the file of the learned Additional District Judge (Fast Track Court), Paramakudi, reversing the judgment and decree dated 24.02.2016 made in O.S.No.63 of 2013 on the file of the Sub Court, Paramakudi.

2.The respondents 1 and 2 herein, represented by the power of agent filed a suit in O.S.No.63 of 2013 on the file of the Sub Court, Paramakudi for declaration and permanent injunction in respect of the suit property and for other reliefs.

3.The case of the plaintiffs are as follows:

3.1.The suit properties originally belonged to one Veerabagu @ Koothakudumban by virtue of 2 sale deeds dated 23.09.1949 and 14.09.1951. The suit items 3 and 4 are the ancestral properties of the said Veerabagu @ Koothakudumban. The said Veerabagu @ Koothakudumban died leaving behind his two children by name, Muniyandi and Perumal and one daughter, by name, Irulayee. The two sons of the said Veerabagu @ Koothakudumban went to Burma for their livelihood and settled there. The said Irulayee married one Palani



and was living in Puliyangudi. The entire property was in possession and enjoyment of the said Irulayee who died subsequently leaving the properties to the enjoyment of her husband, who was to enjoy the property on behalf of the family.

3.2. After the death of the husband of Irulayee, it is stated that the entire property was taken by the said Muniyandi and Perumal, the two brothers of Irulayee. The said Muniyandi and Perumal died, leaving behind their children as legal heirs. The first plaintiff is the daughter of the said Muniyandi and the second plaintiff is the daughter of the said Perumal. The plaintiffs are enjoying the property through their caretaker by name Bharathi, who is also the power agent of the plaintiffs. The property was in continuous possession and enjoyment of the plaintiffs. While so, the first defendant taking advantage of his father's name as Koothan, made an attempt to grab the property and created records to include his name in the revenue records. The plaintiffs came from Burma and approached the elders in the village so that the first defendant will not interfere with the peaceful enjoyment of the plaintiffs through their power agent. Since the first defendant is making an attempt to encumber the property in favour of the defendants 2 and 3, the plaintiffs are constrained to file this suit.

3.3. The first defendant filed a detailed written statement denying the case of the plaintiffs with regard to the title and enjoyment of the property by the plaintiffs. It was contended that the suit property belonged to the own brother of Veerabagu @ Koothakudumban by name Koothan. The first defendant also contended that Irulayee was the only daughter of Veerabagu @ Koothakudumban and that he had no sons. The case of the first defendant is that the husband of Irulayee deserted her after contracting second marriage and settled in Chennai. Therefore, after the death of Irulayee, her husband did not come. Since the suit properties 3 and 4, belonged to one Veerabagu @ Koothakudumban and Koothan, they are entitled to equal share. Though it is admitted that the suit properties 3 and 4 were allotted to the share of Veerabagu @ Koothakudumban, it is stated that the second item of the property was purchased by Kootthan, the brother of the Veerabagu @ Koothakudumban. It is further stated that after the death of Irulayee, the first defendant was in enjoyment of the entire property as rightful legal heir of the said Kootthan.

4. Sum and substance, the first defendant has claimed that he is the sole heir of Irulayee and entitled to substantial portion of estate of Irulayee, who is the only heir of Veerabagu @ Koothakudumban. It is also the specific case of the first defendant that he is in possession and enjoyment of the suit properties and that he has already conveyed the property in favour of the third defendant by a sale deed dated 24.09.2000 in respect of the first item of the suit properties. It is also stated that the first defendant has entered into an agreement of sale in respect of the substantial portion of the second item of the suit properties and executed a power of attorney deed in favour of the second defendant.



5. The plaintiff has examined the power agent as PW-1 and marked Ex-A1 to Ex-A8. The defendants 1 and 3 examined themselves as DW1 and DW2 apart from examining DW3 and DW4 and marked Ex-B1 to 11. The trial Court dismissed the suit specifically holding that the plaintiffs have not proved their case regarding the relationship and that therefore, they are not entitled to any relief. Since PW1 is only the power agent of the plaintiffs, it was further held by the trial Court that the power deed itself was not proved in the manner known to law. Specific issues are raised at the time of arguments before the trial Court that the plaintiffs are not the legal heirs of Veerabagu @ Koothakudumban.

6. Aggrieved by the finding of the trial Court, the plaintiffs preferred an appeal before the Additional District Court, Paramakudi in A.S.No.20 of 2016. The appellate Court allowed the appeal, after holding that the documents Ex-A7, dated 04.03.1963, concludes the issue and proves the fact that Muniyandi and Perumal are the two sons of Veerabagu @ Koothakudumban. The Appellate Court also came to the conclusion that after the death of Irulayee, the two sons of Veerabagu @ Koothakudumban are the legal heirs to succeed to the estates of Veerabagu @ Koothakudumban. From the evidence of DW-1, the lower appellate Court also found that the first defendant himself has admitted the fact that the plaintiffs came from Burma and stayed here for a month and convened Panchayath that was pleaded by the plaintiffs in the suit. Hence, the lower appellate Court accepted the case of the plaintiffs and allowed the appeal. Aggrieved by the judgment and decree of the lower appellate Court in A.S.No.20 of 2016, this appeal has been preferred by the defendants 1 and 3.

7. The learned counsel for the appellants submitted that the lower appellate Court has wrongly construed and shifted the burden of proof on the shoulder of the appellants and that the plaintiffs who have not proved their relationship to claim title to the property as the sole legal heir of Veerabagu @ Koothakudumban cannot be allowed to stand on in the weakness of the case of defendants. The learned Counsel for the appellants further submitted that there is no material placed before the Court except PW1 to prove that the plaintiffs are the legal heirs of Irulayee as daughters of her two brothers Muniyandi and Perumal. The learned Counsel for the appellants submitted that the plaintiffs who have failed to succeed in establishing their own case cannot shift the burden of proof on the first defendant. Since the plaintiffs examined only one witness to speak about the relationship and the plaintiffs have not examined themselves to prove their relationship. It is therefore contended that the lower appellate Court ought to have dismissed the appeal by confirming the judgment of the trial Court. It is to be noted that the defendant has come forward with a false case, disputing even the relationship between Veerabagu @ Koothakudumban and his two sons by name Muniyand and Perumal. The appellate Court on the basis of documentary evidence held that Veerabagu @ Koothakudumban had two sons, by name, Muniyandi and Perumal.



8.The lower appellate Court also pointed out that the first defendant has made an attempt to claim title taking advantage of the power of attorney deed from Irulayee and plaintiffs are entitled to succeed to the estate of Veerabagu @ Koothakudumban. The lower appellate Court on appreciation of whole evidence, came to a definite conclusion that the plaintiffs are the legal heirs of Muniyandi and Perumal who are the sons of the Veerabagu as seen from Ex-A7.

9.Since the relationship is established and the defendant himself has admitted that the plaintiffs are entitled to succeed in their case if they are legal heirs of Muniyandi and Perumal. This Court does find any infirmity or irregularity in the finding rendered by the lower appellate Court on factual issues. Having regard to the fact that the findings of the lower appellate Court are based on evidence, this Court is not in a position to find any substance in the question of law raised by the learned Counsel for the appellants in this appeal. Hence, this second appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Additional District Judge,
Fast Track Court, Paramakudi

2.The Subordinate Judge, Paramakudi

Copy to:-

The Section Officer, V.R.Section, (2 copies)
Madurai bench of Madras High Court, Madurai

+One cc to Mr.S.Srinivasa Raghavan, Advocate, SR.No.40373
cmr
RL/6C/4P/KK/SAR1/19/2/2018

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